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Defendant(s).

(Motion to Vacate—#130)
(Motion for Hearing—#131)

Although not mentioned in any of the Federal Rules of Civil Procedure, motions for reconsideration may be brought under both Rules 59(e) and 60(b). “Under Rule 59(e), a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is

1 presented with newly discovered evidence, committed clear error, or if there is an intervening change
2 in the controlling law.” *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

3 Under Rule 60(b), a court may relieve a party from a final judgment, order or
4 proceeding only for: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered
5 evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other
6 reason justifying relief from the judgment. A motion for reconsideration is properly denied when it
7 presents no arguments that were not already raised in its original motion. *See Backlund v. Barnhart*,
8 778 F.2d 1386, 1388 (9th Cir. 1985).

9 Motions for reconsideration are not “the proper vehicles for rehashing old arguments,”
10 *Resolution Trust Corp. v. Holmes*, 846 F.Supp. 1310, 1316 (S.D.Tex. 1994)(footnotes omitted), and
11 are not “intended to give an unhappy litigant one additional chance to sway the judge.” *Durkin v.*
12 *Taylor*, 444 F.Supp. 879, 889 (E.D. Va. 1977).

13 AMENDMENTS OF THE COMPLAINT

14 Plaintiff has repeatedly amended and attempted to amend his complaint. He seeks to
15 add parties whose present would be futile. He seeks to add parties who have previously been
16 dismissed for his failing to state claims against them. Furthermore, Defendant Cox, whom he failed
17 to name as a defendant in the caption, although he mentions him in the most recent complaint, was
18 treated as though he were a named defendant by this Court in its Order granting the motion for
19 summary judgment.

20 This case is more than three years old. There is a limit to the number of times the
21 Court will permit a party to attempt to amend a complaint when his repeated efforts still fail.

22 FAILURE TO OPPOSE SUMMARY JUDGMENT

23 Plaintiff argues that he did not know that he had to respond to the Motion for
24 Summary Judgment immediately after his appeal was dismissed. He ignores the fact that he requested
25 two extensions to respond to the Motion for Summary Judgment, each, incidentally, filled days after
26 his responses were due. Notwithstanding his belated requests for extensions, this Court granted them.

1 However, rather than responding to the Motion for Summary Judgment as ordered in granting his
2 requests, he chose to appeal the Order giving him the extension—likely for the purpose of obtaining
3 further delay (it was promptly dismissed by the Court of Appeals). Yet, he waits nearly another
4 month, after this Court grants Defendants’ Motion for Summary Judgment, to file this Motion to
5 Vacate, and even then makes no effort to show that he has a legitimate response to their motion. He
6 just says he did not realize he had to. He then requests a two more weeks, from the date of the order
7 on this Motion to Vacate in which to respond to the Motion for Summary Judgment which was filed
8 nearly five months previous, and which he has still failed to present any facts or arguments contradict-
9 ing the facts and arguments presented in Defendants’ Motion.

10 Furthermore, he has failed to adequately show that his failure to respond is because of
11 excusable neglect. Rather, the evidence is clear that his actions have been purely for the purpose of
12 delay because he has no legitimate response to Defendants’ Motion.

13 REQUEST FOR HEARING

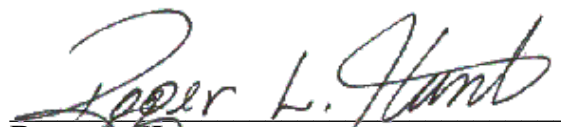
14 Without restating the above, Plaintiff has not presented or identified any arguments or
15 facts which he would present at a hearing.

16 CONCLUSION

17 Plaintiff has failed to identify any of the bases for reconsideration required by Rules
18 59(e) or 60(b). He has failed to show any basis for vacating this Court’s Order or for granting a
19 hearing.

20 IT IS THEREFORE ORDERED that Plaintiff’s Plaintiff’s Motion to Vacate Order on
21 Motion for Summary Judgment (dkt #130) and Motion for Hearing on Motion for Summary
22 Judgment (dkt # 131) are DENIED.

23 Dated: December 18, 2012.

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25 
26 **Roger L. Hunt**
United States District Judge